

civil rights protection & advocacy system for montana

disability **rights** montana
 formerly Montana Advocacy Program

February 14, 2013

Dear Members of the House Judiciary Committee:

Disability Rights Montana urges your support of HB 370. Montana law has no absolute prohibition against executing persons with serious mental illness, developmental disabilities and traumatic brain injury. Although the presence of a "mental disease or defect" or a developmental disability are defenses to a felony charge in Montana, the defense has been narrowly interpreted by the Montana Supreme Court. For example, as recently as December of 2008, the Court found that a man with schizophrenia who was not using medication at the time of the crime was capable of understanding his actions and did not have a mental disease or defect. *Montana v. Meckler*, 190 P.3d 1104 (2008).

In 2002, the U.S. Supreme Court found that the execution of a man with mental retardation violates the 8th Amendment to the U.S. Constitution because of his cognitive impairment and resulting full scale IQ of 59. *Atkins v. Virginia*, 536 U.S. 304 (2002). This ruling applies to all death sentences across the country, including those in Montana. Thus, in Montana people with mental retardation cannot be executed, but people with other developmental disabilities including autism, traumatic brain injury or serious mental illness can be executed, even if their disabilities result in the same or similar cognitive impairments that caused the U.S. Supreme Court to prohibit the execution of persons with mental retardation.

Disability Rights Montana also supports HB 370 as the criminal justice system, like other systems and institutions, is profoundly influenced by the pervasive discrimination against people with disabilities. Juries reflect our broader society and where defendants with disabilities are less articulate or capable of evoking sympathy from juries because of their disabilities, the results will predictably be harsher than those where the defendant can develop a rapport with the jury. The situation in *Atkins v. Virginia* demonstrates that dynamic, as Mr. Atkins' co-defendant who did not have a disability gave a more coherent story, testified against Mr. Atkins and agreed to a plea to avoid a sentence of death, even though he was arguably more culpable for the crime.

It is a tragedy when any person is falsely imprisoned, but when the sentence is not death, it is possible for a wrongful conviction to be reversed and the innocent person to be released. The death penalty is final and ensures that such unfair sentences cannot be rectified.

Beth Brenneman, Staff Attorney